

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 30, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, JULY 30, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JULY 29, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. S-CV-0040270 FIELD SUPPLY v. FIELD, JONATHAN

Defendants' Motion to Compel Further Responses to Request for Production of Documents and Sanctions

Defendants' request is granted in part. Plaintiffs shall provide further responses and responsive documents, without further objections, to request for production of documents no. 69 by August 14, 2020. Defendants' request for sanctions is denied.

Defendants Field Supply, Jonathan "Boomer" Field, and Jonathan Wayne Field's Motion for Summary Judgment, or in the alternative, Summary Adjudication

Preliminary Matters

As an initial matter, the court denies plaintiffs' request for a continuance under Code of Civil Procedure section 437c(h). The matter has already been continued

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several months with plaintiffs failing to seek the submission of any additional evidence. Furthermore, plaintiffs have not made a sufficient showing of facts that may exist but cannot be presented to oppose the motion.

The court also rejects plaintiffs' contentions that defendants' separate statement is defective so as to require denial of the motion. The court has reviewed defendants' separate statement and determines it is substantially compliant with the requirements of the California Rules of Court. Thus, the court will proceed to hear the merits of the motion.

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Objections

Defendants' objections nos. 5, 7, 9, 21, 22, 24, 26, 27, 28, 29, 30, 31, 36, 39, 40, 41, 42, 43, 47, 48, 49, 50, 51, 52, 53, 55, 56 to the John Mehalakis declaration are sustained. Objections nos. 1, 2, 3, 4, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 32, 33, 34, 35, 37, 38, 44, 45, 46, 54 to the John Mehalakis declaration are overruled.

Defendants' objections nos. 59, 61, 63, 64, 65, 75, 77, 78, 80, 82, 83, 84, 85, 86, 87, 89, 93, 95, 96, 97, 98, 102, 103, 104, 105, 106, 107, 108, 110, 112 to the Steven Mehalakis declaration are sustained. Objections nos. 57, 58, 60, 62, 66-74, 76, 79, 81, 88, 90, 91, 92, 94, 99, 100, 101, 109 to the Steven Mehalakis declaration are overruled.

Defendants' objections nos. 116, 117, 118, 120, 121, 122, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 144, 145, 148, 149, 152, 153, 155, 157, 158, 159, 160, 161, 162, 163, 164, 166, 167 to the Virginia Mehalakis declaration are sustained. Objections nos. 113, 114, 115, 119, 123, 124, 125, 126, 127, 128, 129, 141, 142, 143, 145, 147, 150, 151, 154, 156, 165 to the Virginia Mehalakis declaration are overruled.

Ruling on Motion

In the current motion, defendants seek either summary judgment or summary adjudication as to the two remaining claims in the first and third causes of action.

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Moving defendants devote substantial portions of their supporting memorandum and reply to recounting their success with demurrers in the case or to pointedly criticizing the state of the pleadings. This was not helpful to the court in deciding the motions as the court analyzes the motions in light of the allegations in the amended complaint now before the court. Turning to the substance of the motion, the trial court engages in a specific analysis when reviewing a motion for summary judgment or summary adjudication. First, it must define the scope of the motion by looking to the operative pleading. It is the pleading that serves as the “outer measure of materiality” for a motion for summary adjudication in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) The pleading identify the issues raised and the motion must address these issues. Second, the moving party must meet its initial burden. A defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (Code of Civil Procedure section 437c(p)(2).) The trial court must view the supporting evidence, and the inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The final part of the analysis is reached if the moving party meets its initial burden. Only if the defendant meets its initial burden does the burden shift to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (Code of Civil Procedure section 437c(p)(2).) The court reviews the motion keeping these principles in mind.

First Cause of Action

The first cause of action, while entitled fraudulent inducement to contract, appears to be one seeking relief under a theory of promissory fraud. It is alleged plaintiff Green Solutions & More, Inc. (GSM) entered into an oral agreement with defendant Field Supply to retain the services of Field Supply and defendant Jonathan “Boomer” Field (Boomer¹) to manage GSM’s retail channel. (TAC ¶87.) This agreement included that GSM would maintain control over the retail channel, through the corporate entity Field Supply, at all times. (Id. at ¶88.) Instead, Boomer established Field Supply as his own closely-held corporation, giving no stock, control, or other authority to plaintiffs. (Id. at ¶87.) Boomer, however, continued to act as if he was an employee or subordinate to plaintiffs.

¹ The court will refer to Jonathan “Boomer” Field as “Boomer” and Jonathan Wayne Field as Field Sr. for ease of discussion. The court intends no familiarity or disrespect to the parties.

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(Id. at ¶91.) It was not until March of 2017 that plaintiffs learned Boomer did not give any legal control of Field Supply to them. (Ibid.) Plaintiffs suffered damages, including the diversion of profits, based upon Boomer's actions. (Id. at ¶92.) These are the factual allegations that frame the claims in the first cause of action.

A promissory fraud claim is a subspecies of fraud. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) A promise made without an intention to perform is an implied misrepresentation that may be an actionable fraud and such an action may lie where a defendant induces a plaintiff to enter into a contract. (Ibid.) In such instances, the claim focuses on the implied misrepresentation of the promise and is not dependent upon whether the promise is ultimately enforceable as a contract. (Ibid.) As to the first cause of action, defendants submit sufficient evidence to challenge the existence of a false promise. They submit evidence showing Jonathan Mehalakis had knowledge of the Field Supply articles of incorporation listing Boomer as the agent for service of process in December of 2016. (Defendants' SSUMF No. 4.) Jonathan Mehalakis also had knowledge Field Supply's statement of information listed Boomer as the CEO and individuals other than plaintiffs as executives and directors in Field Supply. (Id. at No. 10.) Further, Jonathan Mehalakis was added as a signatory to Field Supply's corporate business account. (Id. at No. 16.) This evidence tends to negate defendants made misrepresentations to plaintiffs regarding the incorporation of Field Supply, which is sufficient to shift the burden to plaintiffs.

Plaintiffs have submitted sufficient evidence to establish a triable issue of material fact as to Field Supply and Boomer. They submit evidence showing Boomer had a subordinate role to them to establish and operate Field Supply in order to grow the retail portion of the business. (Jonathan Mehalakis declaration ¶¶7-11; Steven Mehalakis declaration ¶¶7-10; Virginia Mehalakis declaration ¶¶7-9.) This included plaintiffs having ownership and control over Field Supply. (Ibid.) The evidence here is sufficient to raise a triable issue of material fact as to whether Boomer and Field Supply misrepresented to plaintiffs regarding the promise to establish Field Supply so that plaintiffs would control the corporate entity. The admissible evidence, however, is insufficient to establish a triable issue as to Field Sr. as the evidence does not sufficiently show Field Sr. made any promises or misrepresentations to plaintiffs regarding the establishment or control of Field Supply.

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Third Cause of Action

In the third cause of action, plaintiffs assert a claim for constructive trust. They allege defendants gained assets and property, including capital assets transferred to Field Supply, profits, and embezzled monies that were retained by defendants. (TAC ¶¶100-101.) Initially, a constructive trust is not a cause of action but, rather, a remedy. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 277, fn. 4; see *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1485 [constructive trust “is not ‘a substantive claim for relief’ ”]; *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384 [“[a] constructive trust ... is an equitable remedy, not a substantive claim for relief”]; *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793 [“[a] constructive trust is not a substantive device but merely a remedy”]; *Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023, fn. 3 [“constructive trust ... is not an independent cause of action but merely a type of remedy for some categories of underlying wrong”].) “ ‘[A] constructive trust may only be imposed where the following three conditions are satisfied: (1) the existence of a res (property or some interest in property); (2) the right of a complaining party to that res; and (3) some wrongful acquisition or detention of the res by another party who is not entitled to it.’ ” (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 920; see *Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1069, 80 Cal.Rptr.2d 704.) “ ‘A constructive trust cannot exist unless there is evidence that property has been wrongfully acquired or detained by a person not entitled to its possession.’ ” (*In re Marriage of Chapman* (2016) 3 Cal.App.5th 719, 727.)

Defendants have submitted sufficient evidence showing plaintiffs transferred the corporate assets of Field Supply to themselves. (Defendants’ SSUMF Nos. 16-18.) This evidence tends to negate the existence of any property in the possession of defendants, shifting the burden to plaintiffs.

Plaintiff GSM has submitted sufficient evidence establishing a triable issue as to Field Supply and Boomer. It submits evidence that Field Supply and Boomer maintain the title to equipment used to capitalize Field Supply. (Steven Mehalakis declaration ¶27; John Mehalakis declaration ¶27.) This evidence, however, is insufficient to raise a triable issue as to Field Sr. or the individual plaintiffs. First, there is insufficient evidence presented to show Field Sr. maintains title to any of the equipment. Second, the evidence does not establish the individual plaintiffs have any individual right to title to the equipment.

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Disposition

The motion is granted in part. Summary adjudication is granted as to defendant Jonathan Wayne Field as to the first and third causes of action. Summary adjudication is granted in favor of all defendants as to the individual plaintiffs' assertion of claims in the third cause of action for constructive trust. The remainder of the motion is denied as to defendants Jonathan "Boomer" Field and the defendant corporate entity Field Supply.

2. S-CV-0041570 ENTERPRISE GROUP v. GREENE, RICHARD

Plaintiff/Cross-Defendants' Motion for Summary Judgment or in the Alternative Summary Adjudication

Ruling on Request for Judicial Notice

Plaintiff/Cross-defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Objections

Plaintiff/Cross-defendants' objection no. 3 is sustained. The remainder of the objections are overruled.

Ruling on Motion

The motion is denied. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure section 437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (Code of Civil Procedure section 437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) The moving party bears the initial burden of either establishing each element of a cause of action or establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (*Id.* at 437c(p)(1), (2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn

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from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.)

In the current motion, plaintiff/cross-defendants submit a combined request for summary judgment and/or adjudication aimed at both the complaint and cross-complaint. The evidence presented by the moving parties, however, is insufficient to meet their initial burden as to either pleading.

Interpleader Complaint

The complaint alleges a single cause of action for interpleader. The purpose of an interpleader action is to prevent multiplicity of lawsuits and double vexation. (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1513.) The court initially determines the right of a plaintiff to interplead the funds and, if that right is shown, an interlocutory decree is entered which requires the defendants to interplead and litigate their claims to the funds. (*Id.* at pp. 1513-1514.) “[T]he interpleader proceeding is traditionally viewed as two lawsuits in one. The first is between the stakeholder and the claimants to determine the right to interplead the funds. The second dispute to be resolved is who is to receive the interpleaded funds. [Citations.]” (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 43.) Here, the moving party has failed establish a right to interplead the funds. First, the moving party has not sufficiently established Richard Greene’s capital contribution totaled \$36,522.14. The evidence submitted in support of this fact includes a statement by Jan Haldeman that Greene’s *initial* capital contribution amounted to \$36,522.14. (Plaintiff/Cross-Defendants’ SSUMF No. 6, Haldeman declaration ¶6.) However, the default provision in paragraph 3.3 of the partnership agreement refers to the capital contributions made by the partner, not the initial capital contribution. (Haldeman declaration, Exhibit 1.) Second, the evidence submitted by the moving parties does not sufficiently establish the partnership elected to purchase Greene’s interest after his default on the capital call rather than permitting Greene to remain as a partner. The evidence presents a conflicting scenario as to how Greene was treated by the partnership. There is evidence showing the moving parties issued a formal capital call notice to Greene followed by a default notice electing to purchase Greene’s partnership interest. (Plaintiff/Cross-Defendants’ SSUMF Nos. 22, 25 and evidence cited therein.) There is also evidence, however, that the partnership routinely sent requests for capital calls via email and continued to treat Greene as a member of the partnership even when Greene did not provide full payments on these capital calls. (*Id.* at Nos. 14-16, 24 and evidence cited therein.) This evidence tends to

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show Greene continued to be treated as a partner after the failures to pay on the capital calls, which is inconsistent with the purported election to purchase Greene's partnership interest. Thus, the moving party failed to meet the initial burden as to the interpleader complaint.

Greene's Cross-Complaint

Greene's cross-complaint alleges four causes of action: (1) declaratory relief; (2) breach of contract; (3) breach of fiduciary duty; and (4) accounting. The moving parties have also failed to meet their initial burden as to these claims. Declaratory relief claims address actual controversies regarding the legal rights and duties between the parties. (Code of Civil Procedure section 1060.) Here, the evidence presented by the moving parties tends to substantiate the existence of a controversy between the parties rather than negate its existence. Again, the moving parties' evidence has not sufficiently established the amount of Greene's capital contribution since it refers to an initial contribution of \$36,522.14. (Plaintiff/Cross-Defendants' SSUMF No. 6, Haldeman declaration ¶6.) Further, the submitted evidence does not sufficiently establish the election chosen by the partnership in relation to Greene's default on the capital call. (Plaintiff/Cross-Defendants' SSUMF Nos. 14-16, 22, 24, 25 and evidence cited therein.)

The moving parties fail to meet their burden as to Greene's breach of partnership agreement claim. Greene alleges the moving parties materially breached the agreement when they failed to provide partnership documents; demanding capital contributions after the contributions had been excused and/or waived; and improperly seeking to buy out Greene's partnership interest. (Cross-Complaint ¶26.) The evidence presented by the moving parties does not eliminate the existence of a breach on their part since the amount of Greene's capital contribution is not sufficiently established. (Plaintiff/Cross-Defendants' SSUMF No. 6, Haldeman declaration ¶6.) They also fail to sufficiently establish the election by the partnership in relation to Greene's default on the capital call. (Plaintiff/Cross-Defendants' SSUMF Nos. 14-16, 22, 24, 25 and evidence cited therein.)

Greene's third claim is for breach of fiduciary duty based on the moving parties' failure to provide partnership documents; misleading statements/actions in regards to the capital contributions; improper demand for additional capital contributions; improper attempts to buy out Greene's partnership interest; and improper notices sent to Greene. (Cross-Complaint ¶31.) The submitted

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evidence does not sufficiently negate the existence of a breach on the part of the moving parties. Again, the evidence submitted addresses Greene's initial capital contribution. (Plaintiff/Cross-Defendants' SSUMF No. 6, Haldeman declaration ¶6.) The submitted evidence also presents a conflicting scenario as to how Greene was treated by the partnership. There is evidence showing the moving parties issued a formal capital call notice to Greene followed by a default notice electing to purchase Greene's partnership interest. (Plaintiff/Cross-Defendants' SSUMF Nos. 22, 25 and evidence cited therein.) There is also evidence, however, that the partnership routinely sent requests for capital calls via email and continued to treat Greene as a member of the partnership even when Greene did not provide full payments on these capital calls. (Id. at Nos. 14-16, 24 and evidence cited therein.)

Greene's final claim is for an accounting. Again, the moving parties fail to meet their burden here since the submitted evidence does not sufficiently show the amount of Greene's total capital contributions beyond the initial \$36,522.14. (Plaintiff/Cross-Defendants' SSUMF No. 6, Haldeman declaration ¶6.) Since the moving parties have failed to meet their initial burden, the motion is denied in its entirety.

3. S-CV-0043000 VASQUEZ, RAQUEL v. AEROTEK

Defendants Aerotek, Inc., Allegis Group Holdings, Inc., Allegis Group, Inc., and Francisco Torres' Motion to Compel Arbitration and Stay Action

The motion is granted solely as to defendant Aerotek, Inc. In the current request, the moving defendants seek to compel arbitration between the parties based upon the mutual arbitration agreement. A threshold question for any motion to compel arbitration is whether there exists an agreement to arbitrate. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396.) The moving party carries this initial burden by proving, by a preponderance of the evidence, the existence of a valid arbitration agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) Aerotek presents sufficient evidence establishing the existence of a valid arbitration agreement between itself and plaintiff. (Petersen declaration, Exhibit E.) However, there is insufficient evidence presented to establish the arbitration agreement is applicable to any other defendant other than Aerotek.

With the existence of the arbitration provision established, the inquiry turns to whether the parties should be compelled to participate in arbitration. The court

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shall compel arbitration unless there is a showing that (1) the petitioner waived the right to arbitration; (2) grounds exist to revoke the agreement; or (3) there is a pending court action arising from the same transaction with a possibility of conflicting rulings on common issues of law. (Code of Civil Procedure section 1281.2.) Plaintiff contends the arbitration agreement is both procedurally and substantively unconscionable but fails to make a sufficient showing of unconscionability. Plaintiff does not sufficiently establish the arbitration agreement is one of adhesion, oppressive, one-sided, overly harsh, plaintiff lacked meaningful chose, or plaintiff lacked a reasonable opportunity to understand its terms. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83.) To the extent plaintiff challenges the agreement as limited the ability to pursue PAGA claims, it is noted that plaintiff brings her current complaint solely as an individual without asserting any PAGA claims. (see generally Complaint.) Aerotek has established the existence of a valid, enforceable arbitration agreement, the existence and effectiveness of which has not been sufficiently contradicted by plaintiff. For these reasons, the motion is granted as to defendant Aerotek, Inc.

In sum, the motion is granted as to defendant Aerotek, Inc. The current action is stayed pending arbitration. (Code of Civil Procedure sections 1281.2, 1281.4.)

Trial dates are vacated. An OSC re status of arbitration is set for January 19, 2021 at 11:30 a.m. in Department 40.

4. S-CV-0044372 SHEEHAN, GREGORY v. FORD MOTOR COMPANY

Defendant Ford Motor Company's Demurrer to the Third Cause of Action in the Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is sustained with leave to amend. In the current demurrer, defendant challenges the sufficiency of plaintiff's allegations in his third cause of action for fraudulent concealment. A demurrer is reviewed under well

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established principles. It tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A fraud claim must be pleaded with specificity, with facts stating how, when, where, to whom, and by what means *any misrepresentations were made to a plaintiff*. (*Lazar v. Superior Court* (1996) 12 Cal.4th 797, 808.) Further, fraud allegations involving a corporate defendant require the names of individuals who made the misrepresentations, their authority to speak on behalf of the corporation, whom the individuals spoke to, what was said or written, and when it was said or written. (*Ibid.*) The statute of limitations for fraud claims is three years. (Code of Civil Procedure section 338(d).) Where the plaintiff relies upon delayed discovery, the plaintiff must plead *specific facts* showing (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808.) The court reviews the allegations within the complaint keeping this in mind.

A review of the complaint shows that the third cause of action is deficiently pleaded in two significant respects. First, plaintiff does not plead specific facts sufficiently to rely on the delayed discovery rule. To reiterate, a plaintiff must plead specific facts not only as to the time and manner of the discovery but also as to the inability to have made the discovery earlier despite reasonable diligence. The allegations within the complaint allege, in conclusory fashion, plaintiff was unable to discover the defects until 2019 without further allegations specific allegations as to his inability to discovery these defects at an earlier time.

Second, plaintiff does not plead sufficient facts as to the misrepresentation made to *him* by defendant that would support a fraud claim. The complaint includes many specific allegations regarding vehicle defects without sufficiently linking these defects to misrepresentations relied upon by plaintiff. Plaintiff also fails to plead the level of specificity necessary for corporate defendants. In light of these pleading defects, the third cause of action is subject to demurrer. The court grants plaintiff leave to amend since it appears, from a review of the allegations within the complaint, that the defects in the third cause of action may be remedied. (*Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1240-1241.)

Plaintiff shall file and serve his first amended complaint by August 14, 2020.

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Defendant Ford Motor Company's Motion to Strike the Complaint

The motion is denied as moot in light of the court's ruling on defendant's demurrer.